In the Supreme Court of the United States

OCTOBER TERM, 1975

NO. 74-1405

MELVYN GREENSPAHN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a non-jury trial in the United States District Court for the Southern District of Florida, petitioner was convicted on four counts of willful failure to file income tax returns for the years 1968, 1969, 1970, and 1971, in violation of 26 U.S.C. 7203. Petitioner was sentenced to 90 days' imprisonment on one count and the court withheld imposition of sentence on the other three counts, for which it placed petitioner on probation for three years. The court of appeals affirmed *per curiam* (Pet. App. 2-3).

Petitioner seeks review of the question whether the record supports the trial court's finding that he willfully failed to file the income tax returns.

The parties stipulated in the trial court that petitioner was a person required to file income tax returns in the prosecution years (R. 58).[1] Petitioner stated to Special Agent Larry Plave that he had practiced law since 1956 and understood his duty to file returns (R. 81-82). However, a representative of the Internal Revenue Service testified that although he had made a search for petitioner's tax returns, there was no record of petitioner's having filed income tax returns for the prosecution years (R. 30-39). Although petitioner maintained that he had filed the returns in question by mailing the returns for 1969, 1970, and 1971, and by giving the 1968 return to Revenue Officer Kasper (R. 118-119), Kasper denied receiving the 1968 return (R. 65, 70, 75). Petitioner could not supply the Internal Revenue Service with any retained copies of the returns he said he had filed, and admitted, in conversation with Special Agent Larry Plave, that he had no defense to offer to the charge of failure to file (R. 87).

Thus, the question presented to the trial court was one of credibility. On the one hand, petitioner claimed that he had filed the returns and, on the other hand, the government had, as the court of appeals stated (Pet. App. 3), "put on strong evidence, albeit circumstantial" that petitioner had not filed the tax returns. After consideration of the entire record, the trial court chose to believe the government's evidence and reject petitioner's testimony. Because the trial court's finding is amply supported by the record, further review by this Court is not warranted.

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JULY 1975.

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[1] "R." references are to the Record Appendix in the court of appeals.